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Claws Refuse, Inc. and United Food and Commercial Workers Union, Local 72. Case 4-CA-23920

November 24, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed by the Union on June 12, 1995, the General Counsel of the National Labor Relations Board issued a complaint on July 31, 1995, against Claws Refuse, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 23, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On October 24, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 23, 1995, notified the Respondent that unless an answer were received by August 30, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation, has been engaged in the collection and disposal of residen-

tial and commercial refuse. During the past year, the Respondent, in conducting its business operations, received gross revenues in excess of \$500,000, and purchased and received at its Wysox, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About June 7, 1995, the Respondent discharged its employee Ronald Powell because he supported and assisted the Union.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Ronald Powell on June 27, 1995, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Claws Refuse, Inc., Wysox, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees because they support or assist the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Ronald Powell immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Wysox, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 24, 1995

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge employees because they support or assist United Food and Commercial Workers Union, Local 72.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Ronald Powell immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and we will make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify Ronald Powell that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

CLAWS REFUSE, INC.